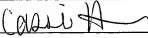
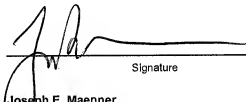


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) BSI-539US	
I hereby certify that this correspondence is being electronically transmitted to the U.S. Patent and Trademark Office on the date shown below. on December 17, 2008 Signature <u></u> Typed or printed name <u>Cassandra Hann</u>		Application Number 10/600,022	Filed June 19, 2003
		First Named Inventor Brent C. Gerberding	
		Art Unit 3774	Examiner Suba Ganesan
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.7.1 Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>41,964</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <div style="text-align: right; margin-top: 20px;"> _____ Signature Joseph E. Maenner _____ Typed or printed name 610-407-0700 _____ Telephone number December 17, 2008 _____ Date</div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing this form, call 1-800-PTO-9199 and select option 2.

Claims 1-20 and 32-36 are presently under consideration. Claims 1, 20, 32, and 33 are independent. In addition to the arguments below, Applicants reiterate the arguments made on pages 7-9 in the Response filed on August 6, 2008.

The Final Office Action allege that "[t]he serpentine band of Ventura is an undulating waveform with symmetric 'peaks' and 'troughs.' The peaks and troughs are arbitrarily assigned as alternate portions of the waveform, although nothing structurally distinguishes a peak from a trough other than the designation of being at the top or bottom of a wave." Office Action, para. 1.

Each of claims 1, 20, and 32, recites a stent comprising "a plurality of serpentine bands and further comprising a generally linear connector strut attaching a peak of one serpentine band to a trough of an adjacent serpentine band at the respective apices of each of the peak and the trough."

Applicants respectfully submit that the Examiner has committed a clear error, resulting in the omission of one of more essential elements needed for a *prima facie* rejection. Contrary to the allegation in the Office Action that the "peaks and troughs are *arbitrarily assigned*" (emphasis added), Ventura discloses a serpentine wave pattern of a plurality of adjacent cylindrical elements consisting of a plurality of alternating valley portions 24 and peak portions 26. Ventura, para. [0036]. A valley portion 24 is clearly identified in each of FIGS. 4A, 4B, 5, 6, 7A, 8, and 9 as having an apex that points toward the left in the figures. Conversely, a peak portion is clearly identified in each of FIGS. 4A, 4B, 5, 6, 7A, 8, and 9 as having an apex that points toward the right in the figures.

Applicants respectfully submit that Ventura *does* disclose a valley portion pointing in one direction (to the left in FIGS. 4A, 4B, 5, 6, 7A, 8, and 9) and a peak portion pointing in an opposing direction (to the right in FIGS. 4A, 4B, 5, 6, 7A, 8, and 9). Applicants therefore respectfully submit that the peaks and valleys of Ventura are not arbitrarily assigned, as is alleged in the Office Action, but are assigned to correspond to definite directions of the apices of the respective peaks and valleys.

In none of the embodiments disclosed in Ventura is a valley portion 24 connected to a peak portion 26 via an interconnecting element 20. Because Ventura discloses a valley portion pointing in one direction and a peak portion pointing in another direction, without a generally linear connector strut attaching a peak of one serpentine band to a trough of an adjacent serpentine band at the respective apices

of each of the peak and the trough, Applicants respectfully submit that Ventura omits one or more essential element needed for a *prima facie* rejection.

Further, Edwin fails to disclose or suggest the claimed feature of a generally linear connector strut attaching a peak of one serpentine band to a trough of an adjacent serpentine band at the respective apices of each of the peak and the trough. Because Edwin fails to disclose or suggest this claimed feature, Applicants respectfully submit that the proposed modification of Ventura with Edwin fails to establish a *prima facie* case of obviousness. Applicants therefore respectfully request reconsideration and allowance of claims 1, 20, and 32. Claims 2-19 all depend from claim 1 and are allowable over the proposed modification of Ventura with Edwin for at least the same reasons set forth above with respect to claim 1. Applicants respectfully request reconsideration and allowance of claims 1-20 and 32.

The Office Action also alleges that the claimed limitation "adjacent serpentine bands having axially aligned oppositely pointing apices" does not exclude the interpretation as adjacent serpentine bands, the bands being axially aligned and having oppositely pointing apices. Office Action, para. 2. Applicants believe that this rejection pertains to independent claim 33, as this is the only independent claim with such language.

Applicants respectfully submit that the Examiner made a clear error in rejecting claim 33. Claim 33 is clear in reciting that adjacent serpentine bands have apices, with the apices being axially aligned and oppositely pointing. The modifier "axially aligned" clearly refers only to the apices. Additionally, the modifier "oppositely pointing" also clearly refers only to the apices. The Office Action's statement that the claimed limitation does not exclude the interpretation of the bands being axially aligned is a clear error that disregards proper English grammar rules.

With the only proper interpretation of the language "adjacent serpentine bands having axially aligned oppositely pointing apices," it is clear that Ventura fails to disclose adjacent serpentine bands having axially aligned oppositely pointing apices and a linear connecting members connecting at least some of the oppositely pointing apices, as is recited in claim 33. The rejection of claim 33 therefore omits one or more essential elements needed for a *prima facie* rejection of claim 33.

Further, Edwin fails to disclose or suggest the claimed feature of "adjacent serpentine bands having axially aligned oppositely pointing apices." Because Edwin fails to disclose or suggest this claimed feature, Applicants respectfully submit that the proposed modification of Ventura with Edwin fails to establish a *prima facie* case of obviousness. Applicants therefore respectfully request reconsideration and allowance of claim 33. Claims 34-36 all depend from claim 33 and are allowable over the proposed modification of Ventura with Edwin for at least the same reasons set forth above with respect to claim 33. Applicants respectfully request reconsideration and allowance of claims 33-36.

Conclusion

In light of the above remarks, Applicants respectfully submit that the present application is in condition for allowance. Applicants respectfully request reconsideration and allowance of claims 1-20 and 32-36.